

BPS-193

April 13, 2006

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. **05-5211**

JOSEPH M. WALLS

v.

THOMAS CARROLL

(D. Del. Civ. No. 05-cv-00585)

Present: RENDELL, AMBRO and GREENBERG, Circuit Judges

Submitted are:

(1) Appellant's "Notice of Appeal and Motion to Stay Appeal," which may be construed as a request for a certificate of appealability under 28 U.S.C. § 2253(c)(1); and

(2) Appellant's "Motion to Stay Appeal and/or Certificate of Appealability"

in the above-captioned case.

Respectfully,

Clerk

MMW/MCF/par

ORDER

The foregoing application for a certificate of appealability is denied. Walls has failed to make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). Walls' petition, which he states was filed pursuant to 28 U.S.C. § 2254 and 28 U.S.C. § 2241, was properly treated as a petition pursuant to 28 U.S.C. § 2254. Because Walls previously filed a § 2254 petition that was denied on the merits, the petition was properly dismissed for lack of authorization pursuant to 28 U.S.C. § 2244 and § 2254. Walls' motion to stay his appeal is also denied.

By the Court,

/s/ Thomas L. Ambro, Circuit Judge

Dated: April 25, 2006

par/cc: Mr. J.W. L.B., Esq.

